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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of FRANCIS GONZALES NAVARRETTE, Deceased.	
DANIEL TORRES et al., Petitioners and Respondents, v. JULIE GUZMAN et al., Objectors and Appellants.	G052161 (Super. Ct. No. 30-2014-00727429) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jamoa Athena Moberly, Judge. Reversed and remanded with directions.

Tomp & Associates and Noelle Michelle Tomp for Objectors and Appellants.

John Frank Davis for Petitioners and Respondents.

* * *

Decedent, Francis Gonzales Navarrette (Francis), executed a trust before her death. She had seven children, each of whom was mentioned in the trust — Jesus Jacob Navarrette (Jesus), Isabel Inez Rivera (Isabel), Joseph M. Navarrette (Joseph), Ileen Frances Navarette (Ileen), Isaac Samuel Navarrette (Isaac), Julie M. Guzman (Julie), and Cassandra Monique Lujan (Cassandra).[1] Ileen had three children — Daniel Torres, Angela Torres, and Gina Lujan (collectively, "Ileen's Children"). Ileen predeceased Francis. After Francis died, Ileen's Children expected they would receive Ileen's share of the trust. When they were notified otherwise, they petitioned the lower court for a determination they are entitled to a distribution under the trust. The lower court granted the petition. Isaac and Julie appeal. Because we conclude the terms of the trust governing distribution of its assets unambiguously provide for distribution of Ileen's share to her siblings rather than to Ileen's Children, we reverse.

FACTS

On December 2, 2008, Francis executed the Francis Gonzales Navarrette Revocable Trust. At the time, she had seven living children, including Cassandra, who was adopted and provided for differently in the trust. Ileen died in October 2011. Francis died in May 2013. Upon Francis's death, Isaac and Julie became successor trustees, and the trust became irrevocable.

This appeal concerns paragraph 5.3 of the trust, which governs the disposition of the remainder of the trust estate after personal property has been distributed. Paragraph 5.3 is located within article five entitled "Distributions After Settlor's Death." Paragraph 5.3(b) provides, "If any children of the settlor survive her, the trustee shall divide the property into as many shares of equal market value as are

[1] We refer to the parties by their first names for clarity, not out of disrespect. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 817, fn. 1.)

necessary to create one share for each of the settlor's children who survive her and one share for each of the settlor's deceased children who leave issue who survive the settlor with the exception of Cassandra . . . who shall be provided for specifically below under paragraph [5.3](d)." Paragraph 5.3(c) provides, "Each share created for a surviving child of the settlor, except Cassandra . . . , shall be distributed outright to that surviving child." Paragraph 5.3(d) concerns additional details regarding Cassandra not relevant to this appeal. Paragraph 5.3(e) provides, "If Isaac . . . is deceased prior to settlor, then his share shall be divided equally between his children. If Julie . . . is deceased prior to settlor, then her share shall be divided equally between her children. If any of Isaac or Julie's children have reached the age of 25 years at the death of the settlor, the trustee shall distribute that child's share outright to that child; if an individual child of a deceased child has not reached the age of 25 years at the death of the settlor, the trustee shall continue to hold, administer, and distribute that child's share in a separate trust for that child according to the terms set forth in Article Six applicable to the Separate Share Trust for Issue." Paragraph 5.3(f) provides, "If any of settlor's other children fail to survive her, their share shall be distributed equally among settlor's remaining surviving children, except Cassandra, who has been provided for in a different manner as setforth [*sic*] in paragraph [5.3](d) above." Finally, paragraph 5.3(g) provides, "If none of the issue of the settlor survives her, the trust estate shall be distributed outright to the settlor's heirs."

Ileen's Children filed a petition to determine questions of construction under the trust and to ascertain trust beneficiaries under Probate Code section 17200, subdivisions (b)(1) and (b)(4).[2] Isaac and Julie filed an objection to the petition and requested the petition be dismissed with prejudice. Pursuant to the parties' stipulation, the lower court ordered the trial bifurcated to first address the interpretation of the trust. In the event the court determined the trust to be ambiguous, a second phase of trial was to

[2] All further statutory references are to the Probate Code.

include witnesses and other extrinsic evidence. The parties filed trial briefs. When they appeared for trial on April 10, 2015, the court admitted the trust into evidence, heard oral argument, and took the matter under submission. On April 14, 2015, the court granted the petition, finding as a matter of law the trust language in paragraph 5.3 is not ambiguous when read in conjunction with paragraph 6.2 and the balance of the trust document. The court interpreted paragraph 5.3(b) to mean if any one of Francis's children predeceased her, the children of that child would take that share to be divided among them. The court determined in light of its interpretation, there was no need for an evidentiary trial on the petition. The court entered an order directing that Ileen's Children are entitled to take their predeceased mother's share of the subject estate in equal shares pursuant to sections 240 and 245. The order is final, making it appealable pursuant to section 1304, subdivision (a).

DISCUSSION

"'The interpretation of a written instrument, including a . . . declaration of trust, presents a question of law unless interpretation turns on the competence or credibility of extrinsic evidence or a conflict therein. Accordingly, a reviewing court is not bound by the lower court's interpretation but must independently construe the instrument at issue.'" (*Scharlin v. Superior Court* (1992) 9 Cal.App.4th 162, 168.)

The Trust Does Not Express Francis's Intent to Provide for Ileen's Children

We begin with several statutory guides to interpretation of the trust instrument. (See § 21101 ["this part applies to a . . . trust"].) Section 21102 provides: "(a) The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument. [¶] (b) The rules of construction in this part apply where the intention of the transferor is not indicated by the instrument. [¶] (c)

Nothing in this section limits the use of extrinsic evidence, to the extent otherwise authorized by law, to determine the intention of the transferor." (See *Estate of Russell* (1968) 69 Cal.2d 200, 206 [when language ambiguous or uncertain, resort may be had to extrinsic evidence to ascertain intention of testator].)

"The words of an instrument are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative. Preference is to be given to an interpretation of an instrument that will prevent intestacy or failure of a transfer, rather than one that will result in an intestacy or failure of a transfer." (§ 21120.) "All parts of an instrument are to be construed in relation to each other and so as, if possible, to form a consistent whole. If the meaning of any part of an instrument is ambiguous or doubtful, it may be explained by any reference to or recital of that part in another part of the instrument." (§ 21121; see *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439-1440 [in de novo review of trust, appellate court looks to document as a whole to determine trustor's intent]; *Brock v. Hall* (1949) 33 Cal.2d 885, 889 (*Brock*) [trust construction depends on trustor's intent at time of execution as shown by face of document and not on any secret wishes, desires or thoughts after the event].) The "words of an instrument are to be given their ordinary and grammatical meaning unless the intention to use them in another sense is clear and their intended meaning can be ascertained." (§ 21122; see *Wells Fargo Bank v. Huse* (1976) 57 Cal.App.3d 927, 932.) Finally, the question of a testator's intent is one of law, not fact, where there is no extrinsic evidence. (*Estate of Armstrong* (1961) 56 Cal.2d 796, 801.)

Isaac and Julie contend the lower court improperly interpreted and reformed the trust, and gave a share to unintended grandchildren of Francis, thereby diminishing the inheritance of Francis's six children who survived her. They argue the trust is unambiguous or, alternatively, if it is ambiguous, an evidentiary hearing is required for the court to hear extrinsic evidence to determine Francis's true intent. Our de novo review leads us to conclude as a matter of law, that because Ileen predeceased

Francis, the trust unambiguously requires Ileen's share to be distributed to Ileen's siblings, not to Ilene's Children. An evidentiary hearing is thus unnecessary.

Paragraph 5.3(b) creates a share for each of Francis's children, whether living or deceased leaving issue,[3] with the exception of Cassandra who was provided for differently and whose provisions are not at issue in this appeal. A plain reading of paragraph 5.3(b) indicates that when Francis died, the trust should have been divided into six shares — one each for Francis's living children, Jesus, Isabel, Joseph, Isaac and Julie — and an additional share representing Ileen who died leaving issue. The question is how Francis intended to distribute Ileen's share.

Paragraphs 5.3(c) and 5.3(d), which govern Cassandra's separate college fund, do not relate to Ileen. Paragraph 5.3(e), which carves out a special exception in the event Isaac or Julie predeceased Francis, does not relate to Ileen, though we acknowledge the obvious omission of Ileen from its provisions. While paragraph 5.3(e) resolves how Isaac's and/or Julie's children would take under the trust if Isaac and/or Julie predeceased Francis, it does not specify to whom and how the shares of Jesus, Isabel, Joseph, or Ileen would be distributed under the trust if one of them predeceased Francis. It appears from paragraph 5.3(e) that Francis's intent was to treat Isaac and Julie differently from her other children. Only Isaac's and Julie's children were to take if Isaac or Julie predeceased Francis. The trust does not include a provision for Ileen's Children in the event she predeceased Francis.

Paragraph 5.3(f) confirms our conclusion and squarely answers the question. It provides if any of settlor's *other children* fail to survive her, their share shall be distributed equally among the remaining surviving children, except Cassandra. Clearly this applies to Ileen. The "other children" are those children for whom a share has been created, other than Isaac or Julie, because paragraph 5.3(f) follows the carve-out

[3] The trust does not create a share for any of Francis's children who are deceased without leaving issue.

for Isaac and Julie in paragraph 5.3(e). Francis could have provided for Ileen to receive the same carve-out as Isaac and Julie, but she did not. According to the plain language of paragraph 5.3(f), Ileen's share is to be distributed equally among the "remaining surviving children, except Cassandra" — i.e., among Jesus, Isabel, Joseph, Isaac and Julie. There is no provision for a gift to Ileen's Children.

Reading the entire paragraph 5.3 in context and as a "consistent whole" (§ 21121), Francis's testamentary intent is clear. Her primary purpose was to limit the distribution of her wealth to her *own children*, except for Cassandra who was otherwise provided for, leaving it to her children to provide for *their* offspring. Only Francis's own children would enjoy the inheritance, provided they did not predecease Francis. The lone exception to this plan was for Isaac's and Julie's children. The face of the instrument does not reveal why Francis made special provisions for Isaac's and Julie's children, and not for any other grandchildren, and it is not our role to speculate about the reasons for her choice. But explanations can easily be imagined that are not irrational. Whatever the reason — the testamentary choice was clearly made. We will not interfere. (See *Estate of Kincaid* (1959) 174 Cal.App.2d 84, 88 ["We are not entitled to revise or rewrite the will on the basis of what might possibly appear to us to be a more logical testamentary scheme. Nor would it be profitable for us to speculate as to the reasons which may have motivated the testator in making the gift subject to the condition which he chose to declare"].)

There Was No Gift by Implication

In an effort to avoid the plain language of paragraph 5.3(f), Ileen's Children argue Francis intended a gift to them by implication. According to Ileen's Children, the creation of a share for Ileen necessarily implies an intention to make a gift to her children. They assert by *failing* to create a share for a predeceased child *without* having living issue, paragraph 5.3(b) *implies* a gift to them. Not so. As noted above, the entirety

of paragraph 5.3 demonstrates Francis's primary testamentary intent was to limit distribution of her estate to her own children. Ileen's Children nevertheless attempt to advance their argument by relying on *Brock, supra,* 33 Cal.2d 885. However, *Brock* does not assist Ileen's Children — it is factually distinguishable.

In *Brock*, a father established an inter vivos trust for the benefit of his two daughters. (*Brock, supra*, 33 Cal.2d at p. 886.) The trust provided upon reaching the age of 18, each daughter would receive half of the net income from the trust property, until reaching the age of 35, when each would receive half of the trust property outright. The trust contained provisions indicating the trustor's desired disposition of the property if, for example, either daughter died without having married, or if they died having married and leaving issue, or if they were married without issue, and so forth. (*Id.* at pp. 886-887.) Before reaching age 35, the younger daughter died a widow, without issue, a scenario not addressed in the trust. The trustor contended since there was no provision for an express gift to the older daughter under these circumstances, the younger daughter's share should revert to him. (*Id.* at p. 887.)

The Supreme Court found applicable the law governing implied gifts in wills. The court observed, "The implication of gifts in wills rests upon the primary rule of construction that the duty of the court in all cases of interpretation is to ascertain the intention of the maker from the instrument read as a whole and to give effect thereto if possible, and it is well settled that, where the intention to make a gift clearly appears in a will, although perhaps imperfectly expressed, the court will raise a gift by implication." (*Brock, supra,* 33 Cal.2d at pp. 887-888.) However, in order to imply a gift, "the intention to make a gift [must] clearly appear[] from the instrument taken by its four corners and read as a whole, considering its general scheme, the property involved, and the persons named as beneficiaries . . . . [Citation.] Although the court may not indulge in conjecture or speculation simply because the instrument seems to have omitted something which it is reasonable to suppose should have been provided, a gift will be

raised by necessary implication where a reading of the entire instrument produces a conviction that a gift was intended." (*Id.* at p. 889.)

In discussing the testator's intent, our Supreme Court noted there were several contingencies for which no express provision had been made, including the one that occurred, where one daughter died a widow with no issue. (*Brock, supra,* 33 Cal.2d at p. 891.) The absence of provisions being made for all possible contingencies, however, was insufficient to defeat the dominant plan of distribution shown by the trust document. The general plan for disposition showed the trustor intended a surviving daughter to have all the property in the event the other beneficiaries were not in existence. (*Id.* at p. 890.) "The mere fact that an instrument is incomplete in one particular does not nullify an intention which is clearly shown." (*Id.* at p. 891.) The court concluded the probability that the trustor intended to make a gift to his surviving daughter in this contingency was so strong as to nullify the existence of any other possible intent. (*Id.* at p. 892.)

The *Brock* court concluded by emphasizing the importance of judging each case by the actual language of the instrument being construed. "The intent of the maker *as disclosed by the will or trust document* determines whether a gift should be raised by implication, and each decision must of necessity depend upon the wording of the particular instrument involved when considered with the intention manifested by the document as a whole." (*Brock, supra,* 33 Cal.2d at p. 892, italics added.)

Here, rather than demonstrate a clear intent that *all* children of Francis's predeceased children receive a share of her estate, Ileen's Children attempt to re-write the trust to provide a gift to them that was not clearly intended. They reason it would be meaningless to create a share for a predeceased child with living issue if such issue were not intended to benefit. The argument lacks merit, because the trust creates a share with a specific distribution to and for Isaac's and Julie's children, which evidences Francis knew how to give a gift to her grandchildren if she so desired. Ileen's Children reason that if it

was Francis's intent to limit gifts to her grandchildren, then a simple sentence creating shares only for the children of Isaac or Julie would have sufficed. But that device would not accomplish Francis's clear testamentary intent — to provide gifts *only* to her surviving children — with a special carve-out for the children of Isaac and Julie should they predecease Francis.

Ileen's Children next contend a gift by implication is supported by use of the word "beneficiary" in paragraph 6.2(a) contained within article six entitled "Dispositive Provisions of Trust Created After Settlor's Death." The article begins with paragraph 6.1 relating to a trust to be established for Cassandra. The article then contains paragraph 6.2 entitled "Separate Share Trust for Issue." This lengthy provision applies when a separate share trust has been created for a beneficiary under the age of 25. Subdivision (a) defines beneficiary: "The beneficiary of this trust is the individual issue of a deceased child of the settlor or the individual issue of the settlor, as the case may be, *for whom this trust is created pursuant to the other provisions of this trust instrument*." (Italics added.) There is *no* indication Francis intended a separate share trust to be created for Ileen's Children. Rather, paragraph 5.3(e) provides for creation of a separate share trust *only* for Isaac's and Julie's children. Moreover, the record reflects Ileen's Children were all over age 25 when the trust was executed, so Francis could not have contemplated a separate share trust for them. By its terms, article six is inapplicable to Ileen's Children. We fail to see how paragraph 6.2 supports a gift by implication.

Finally, Ileen's Children cursorily contend paragraph 1.8 supports the conclusion Francis intended a gift by implication. Paragraph 1.8 appears within article one entitled "Creation of Trust." It provides, "As used in this instrument, the terms 'child' and 'children' refer to natural children and to children who have been legally adopted before age 21 by the parent or parents from or through whom their right to inherit or to take is determined or derived, and the term 'issue' refers to all lineal descendents of all generations, with the relationship of parent and child at each

generation being determined by the definitions of 'child' and 'children' set forth in this instrument." Ileen's Children fail to elaborate on how standard definitions standing alone can support a gift by implication. In any case, paragraph 1.8 does not concern distribution of the estate, so it has no bearing on our analysis.

We are persuaded Francis did not intend a gift by implication to Ileen's Children. The trust provisions upon which they rely are unrelated to Francis's intent regarding distribution. A gift by implication can only occur when the intention to make it clearly appears from the instrument. Here, all of the trust's provisions concerning distribution can be harmonized. The plan of distribution intended by Francis was for all children to receive a share unless one of the children predeceased her, with the exception of Cassandra who was provided for differently. If Isaac or Julie predeceased Francis, their children would inherit. If any of Francis's other children predeceased her, their children would not inherit. If all her children predeceased her, the estate would be distributed to the heirs. There is no ambiguity. The only reasonable intention to be gleaned from the plan of distribution, when the instrument is taken by the four corners and read as a whole, is that the surviving children of Francis, except Cassandra, are to receive equal division among themselves of the share created for Ileen.

Ileen's Children Are Not Entitled to Inherit by Intestacy

Ileen's Children concede the trust fails to specify how they are to receive a distribution from Francis's estate but argue distribution should occur according to sections 240 and 245. They are incorrect, because they have failed to show Francis intended a distribution to them. Section 245, subdivision (a) provides, "Where a will, trust, or other instrument calls for property to be distributed or taken 'in the manner provided in Section 240 . . . ,' or where a will, trust, or other instrument that expresses no contrary intention provides for issue or descendants to take without specifying the manner, the property to be distributed shall be distributed in the manner provided in

Section 240." Section 240 governs the law of intestate succession. Here, the trust does not provide for property to be distributed under section 240 unless Francis dies leaving no issue, nor does it provide for Ileen's Children to take without specifying the manner of distribution to them. To the contrary, paragraph 5.3 expressly sets forth the manner for distribution of the shares, and Ileen's Children are not included. Moreover, as we have noted, preference is to be given to an interpretation that will prevent intestacy rather than one that will result in intestacy. (§ 21120.) Sections 240 and 245 are thus inapplicable.

Paragraphs 5.3(f) and 5.3(g) Are Not Invalid

In a final effort to convince us the lower court was correct, Ileen's Children alternatively argue the court should ignore paragraph 5.3(f) as invalid, because it applies to no one, given Francis already disposed of her estate by making provision for living children or a predeceased child with surviving issue, and there was no predeceased child with no surviving issue. Nonsense. The premise is faulty. We have concluded that paragraph 5.3(f) applies to Ileen's Children. Ileen's Children argue paragraph 5.3(g) should be disregarded because it is not necessary, as shares have been created for specific persons and proper distribution of those shares arises directly or through application of law. Although paragraph 5.3(g) is not applicable because she had children who survived her, it was nevertheless a necessary provision to cover the contingency that Francis would die without issue.

Conclusion

We conclude the trust language in paragraph 5.3 is not ambiguous or uncertain, but clearly evidences Francis never intended her grandchildren other than Isaac's and Julie's children, to receive their deceased parent's share. Because there is no ambiguity, extrinsic evidence is not required to interpret the trust. (*Estate of Russell,*

supra, 69 Cal.2d at p. 206.) The lower court committed prejudicial error in granting Ileen's Children's petition.

DISPOSITION

The order granting the petition by Ileen's Children is reversed. The case is remanded with directions to vacate the order. There is no ambiguity in the trust, so an evidentiary hearing is not required on remand. Accordingly, the trial court is directed to enter a new and different order dismissing the petition with prejudice. Appellants Julie Guzman and Isaac Navarrette shall recover their costs on appeal.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.